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IN THE SUPREME COURT OF THE ~~UNITED STATES~~

October term, 1975

Case No. 75 - 289

	Superior Court Civil 52243
THEODORE E. SCHULZ	
Plaintiff, Petitioner,	COMPLAINT FOR RECOVERY OF
vs.	PUBLIC FUNDS
GEORGE CRESS ET AL.,	
	Court of Appeal
Defendants, Respondents	1/Civil 35533

Petition for rehearing
of order of Oct. 20, 1975
on petition for writ of
certiorari to California
Court of Appeal, First
District, Fourth Division

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IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1975

No. 75 - 289

THEODORE E. SCHULZ
Petitioner,

vs.

GEORGE CRESS ET AL.,
Respondents

Petition for rehearing of order (Oct. 20, 1975) on petition for writ of certiorari to California Court of Appeal, First District, Fourth Division.

By authority of Rule of Court No. 58, 2, Theodore E. Schulz, acting pro se, respectfully petitions the Supreme Court for a rehearing of order of October 20, 1975, denying writ of certiorari.

First, petitioner sets forth circumstances of substantial and controlling effect that have intervened between him and granting of writ:

THIS COURT HAS OVERLOOKED ESSENTIALS

The Honorable Court is asked to note that respondents have assented to granting of writ by failure to enter objections thereto. All facts and the law favor petitioner's view that writ should issue.

The Honorable Court has apparently taken no cognizance of

the compelling questions for review set out on pages 3, 4 and 5 of original petition and of the undisputed and indisputable facts recited as "Statement of the Case" on pp. 5-8.

There is no indication that Honorable Court has called up the record for examination. Without the record, with its voluminous exhibits in support of allegations, the Court cannot properly evaluate statements in petition for writ.

RIGHT TO HEARING OF CAUSE HAS BEEN DENIED

Briefly and generally: The courts of California have brushed aside principles of justice and equity and those statutes and the law as developed by the courts respecting the weight that must be given to allegations properly pleaded and uncontroverted in answers and have refused to allow plaintiff's cause to be heard. (CCP 431.20(a) and 430.80; Dalzell v. Kelley (1951) 140 C.A. 2nd 66.) Petitioner has been denied his day in court.

There has been substantial interference by Court of Appeal with the administration of justice, this court having reached its decision to sustain judgment of dismissal on the basis of misapprehension of facts and misunderstanding of applicable law.

CALIFORNIA LAW CONTROLLING

The Honorable Justices are respectfully reminded that "Where state law controls, federal courts . . . must ascertain and apply state law." – 36 CJS 327, 329.

It is an established principle that "Any law of the state which would substantially affect the outcome of a lawsuit must be re-

garded as substantive and must be followed by the federal courts." – 36 CJS 616.

It has been held that "A party's rights are substantive; the manner in which he gets them are procedural." -- Boyd v. Bell, D.C.N.Y., 64 F. Supp. 22, quoted in 35A CJS 37. This court has the power and, petitioner believes, the duty to carry out procedures that will assure petitioner and the people of Santa Cruz County their rights under California law.

CALIFORNIA LAW HAS BEEN VIOLATED

In petition of Aug. 19, 1975, petitioner asked: "May the courts permit defendent officers of Santa Cruz County to waive statuatory provisions bearing upon their official acts?" (p. 3.) He now avers as a substantial fact that the laws of California were violated, ignored, circumvented, waived by defendants in petitioner's Superior Court action. But the High Court has ruled (Burton v. US, 202 US 344) that "all officers of government . . . are creatures of the law and bound to obey it." Allegation of waiver has never been challenged.

It is also averred that, as the result of this waiving of laws, the sovereign people of the state, as represented by petitioner and other taxpayers of Santa Cruz County, were deprived of their property (taxes paid into County treasury) without due process of law.

GOVERNMENT CODE SECTION 25904 DETERMINATIVE

There is but one California statute which permits the making of a contribution from a County treasury to a fair like that staged by 14th Dist. Ag. Assoc. This is Gov. Code sec. 25904 (set out in full

on page 26 of petition).

Failure of defendant officers to follow 25904 and their admission that it was not followed are recited on p. 6. In view of the fact that neither the Attorney General nor the courts of the state have issued rulings concerning the necessity of following 25904, petitioner must quote the "next best" authority on the subject, the Legislative Counsel of the Legislature, who says:

> "In our opinion Santa Cruz County may make contributions to the 14th District Agricultural Association for the latter's use in conducting a local fair so long as the statutory procedure is observed . . .
> "The only authorization for a county to expend funds for fair purposes is section 25904, and this section provides that the contributions to be made for fair purposes are to come from the special tax authorized by the section . . .
> ". . . we are of the opinion that Santa Cruz County may make contributions to the . . . Association from a fund established pursuant to Section 25904 of the Government Code but not otherwise." – Mr. George Murphy, Sacramento, Cal., Aug. 28, 1972 (emphasis added – TES).

The Honorable Court is earnestly requested to note that opinion of Legislative Counsel refers to the special tax authorized by 25904 and to a fund established pursuant to 25904. Both of these references are of utmost importance. These two provisions of the section are definitive and controlling as to whether a County may make contributions to a fair. The courts below have overlooked the clear, condition-setting language of the determinative statute.

Judge of Superior Court truly said in his judgment: "Supervisors simply allocated $15,000 out of the general fund to the county fair . . . " Thus, the $15,000 was a gift of public funds in contra-

vention of the state constitutional bar to making gifts of public money. (Excerpt, Art. XVI, sec. 6, on p. 25.)

GOV. CODE SECTION 29302 IRRELEVANT

Respondents have "relied" upon Government Code section 29302 as providing authority for making a contribution to association and its fair. This section has no applicability to case under review. (See p. 27 for full text.)

Section 29302 presupposes the existence of a special fund authorized by some other statute. It presupposes the levying of a special tax authorized by other statute. It presupposes the setting of a tax rate for the special fund. It permits the tax rate for the special fund to be added to the tax rate for the general fund. It does not authorize the expenditure of funds for any purpose.

Only when the special tax rate has been fixed and added to the general fund tax rate, the special tax levied and the special fund created can officers avail themselves of the accountancy convenience provided by 29302.

Since the special tax authorized only by 25904 was not levied, no fund for fair purposes was ever created. Consequently, there was no money in the general fund that could lawfully have been appropriated for fair purposes.

GROUNDS NOT PREVIOUSLY PRESENTED

Petitioner now sets down three substantial grounds for issuance of writ not previously presented. These effectively negate arguments of appellate court in support of its decision:

1. The official County publication of tax rate for all purposes for 1971-72 shows no rate for any fair-related purpose. This is conclusive evidence that no special tax was levied for "county fair" (14th Dist. Ag. Assoc. fair) in that year. Hence, Gov. Code sec. 29302 could not have come into play.

2. Petitioner has a specimen of the agreement form signed by Council on Environment in arranging for its co-called "environmental exhibit" at the 1971 Ag. Assoc. fair. This form is titled "Agreement for Exhibit Space" and effectively vitiates the Court of Appeal's conclusion that Council was in the position of contractor hired by Association to perform work for fair or Association.

3. Neither respondents nor the courts would be able to show that Council actually staged an exhibit at the fair. On knowledge, documentary evidence, information and belief petitioner declares that Council spent the $2,000 allocated to it in renting a tent, which was set up on fairgrounds, and then allowed perhaps 12 organizations to use space in the tent during the fair. The only exhibit in the tent having to do with environment or ecology was that of "Fish Forever," a display showing how old auto tires could be sunk into the ocean to provide protection and hatching grounds for fish. The ad hoc group staging this exhibit had no formal connection with Council, but was a beneficiary of Council's largess. Neither it nor Council were entitled to receive "25904 funds" (even had there been such funds).

Respectfully submitted,

Theodore E. Schulz

Theodore E. Schulz
Petitioner pro se

CERTIFICATE OF GOOD FAITH

Theodore E. Schulz, petitioner pro se herein, hereby declares that foregoing petition for rehearing is presented in good faith and not for purpose of delay, and that the petition is restricted to the grounds specified in Rule 58, 2. Signed under penalty of perjury at Aptos, CA., this 11th day of November, 1975.

Theodore E. Schulz

Theodore E. Schulz

AFFIDAVIT OF SERVICE

This is to certify that on Nov. 11, 1975, one (1) copy of foregoing petition for rehearing was served on attorney of record for respondents pursuant to Rule 33(1) and (3c) by depositing same in the United States mail, first class postage prepaid, addressed to:

Mr. Dwight L. Herr,
Counsel for Respondents
701 Ocean Street
Santa Cruz, CA 95060

Signed under penalty of perjury at Aptos, CA, this 11th day of November, 1975.

Theodore E. Schulz

Theodore E. Schulz